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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,037	07/30/2003	Lee R. Brown	5359	7382

7590 06/05/2006
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EXAMINER

GILBERT, SAMUEL G

ART UNIT PAPER NUMBER

3735

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/629,037

Applicant(s)

BROWN, LEE R.

Examiner

Samuel G. Gilbert

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant(5,074,853) in view of Dawn et al (4,338,371).

Claims 1 and 2 – device –10- is a multi-layer device capable of being used as a foreskin replacement. Element –20- is a third layer of high fluid absorbency, element –40- is a fourth layer porous to air and impervious to fluid flow, element –28- is an elasticized material and elements –42-, -44- and –48- are means to open a closure path through the layers. Bryant does not teach a separate first and second layer that are designed to contact the tissue and wick fluid away from the tissue, although Bryant does teach additional and different kinds of layers may be used with the device, column 3 lines 36-39. Dawn et al (4,338,371) teaches a multilayer absorbent articles including a gauzelike contact layer –12- backed with a wicking layer –14-, the layers –12- and –14- are provided to provide a comfortable contact surface for the wearer and to wick the moisture away from the wearer. It would have been obvious to one of ordinary skill in the medical arts to include the contact and wicking layers –12- and –14- of Dawn et al. with the device of Bryant to provide for the comfort and wicking abilities taught by Dawn et al.

Claim 3 – it is general practice in the medical arts to use sterile material.

Claim 5 – Bryant teaches the absorbent layer may be any known absorbent layer, column 3 lines 23, 24. Super absorptive polymers(SAP) are well known in the arts as shown in Wada(6,129,718) column 3 lines 34-37.

Claim 6 – The properties of the SAP are not set forth in Wada but it is well known in the medical arts that super- absorptive polymers are capable of holding up to eighty times its weight in water, see Tsujimoto et al(5,930,949) abstract, lines 3-6.

Claim 7 – the fourth layer of Bryant may be a plastic film, column 3 line 28. Polypropylene is a plastic film known to be used as a fluid impervious layer for absorbent pads as shown by Hoey, column 11 lines 37-39.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryant(5,074,853) and Dawn et al (4,338,371) as applied to claim 1 above, and further in view of Glaug et al. (6,565,548)

Claim 4 – Dawn et al teaches the first layer may be made of a wide variety of fabrics but does not teach polypropylene. Glaug et al teaches the use of polypropylene for the first (contact) layer. It would have been obvious to one of ordinary skill in the medical arts at the time the invention was made to use polypropylene for the contact layer of the combination above as a substitution of functionally equivalent contact layers. In the absence of showing any criticality in the exact material used for the first (contact) layer the selection of any specific material would be an ordinary design expedient to one of ordinary skill in the medical arts.

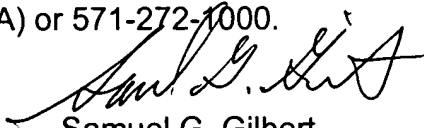
Claim 8 – see claims 4, 6 and 7 above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Samuel G. Gilbert
Primary Examiner
Art Unit 3735